

September 19, 1997

Dear :

Having reviewed the appeal of disqualification from school employment which resulted from a Department of Education criminal history record check conducted pursuant to *N.J.S.A. 18A:6-7.1 et seq.*, *In the Matter of the Disqualification from School Employment of O.J.R.*, Agency Docket Number DHP 76-97, I determine that you are not qualified for employment as a (school bus) mechanic.

The record reveals that you were charged on April 6, 1980 with Possession of Amphetamine, for which you were found guilty on July 2, 1981 and sentenced to two years probation and ordered to pay a \$425 fine. Additionally, on May 12, 1992, you were charged with Possession of Dangerous Drugs/Possession of Cocaine, for which you were found guilty on December 18, 1992 and sentenced to 364 days confinement, three years probation, 24 months suspension of your driver's license and a \$2,200 fine.

The Commissioner of Education, or his designee¹, is obligated to review appeals of disqualification from school employment to determine whether an appellant has affirmatively demonstrated rehabilitation by clear and convincing evidence. The burden of proving rehabilitation is, therefore, on you as the appellant. In this review, the following factors must be considered:

- (1) The nature and responsibility of the position which the convicted individual would hold;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the individual when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense; and
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have had the individual under their supervision. (*N.J.S.A. 18A:6-7.1*)

¹ It is noted that *N.J.S.A. 18A:4-34c* authorizes each assistant commissioner to hear and determine controversies and disputes which may arise under school laws, or the rules of the state board, or of the commissioner.

The evidence you have submitted on appeal has been reviewed against the above-named factors. First, I have considered that the job for which you are applying is one which does not necessarily entail direct, ongoing contact with students. I have further noted that you were 32 years old at the time of your most recent disqualifying offense, and the incident cannot, therefore, be attributed to immaturity. To the contrary, you forthrightly attribute your past conduct to your use of alcohol and other drugs. You attest that the first disqualifying conviction was the result of having been pulled over for speeding, and a subsequent search of your car having uncovered drugs. Although you met the terms of your sentencing requirements, you affirm that you “did not yet know that [you were] an alcoholic.” (O.J.R. Statement of Appeal at p. 1)

The arrest in 1992 was pursuant to a warrant to search your house where the police “discovered [your] cache of drugs.” (*Id.*) Still, however, after serving time in jail and meeting your probation requirements, you affirm that you were not aware you had a problem with alcohol and other drugs. You aver, “In 1996, I was pulled over for drunk driving and driving while on the revoked list. It was suggested to me to try AA.” (*Id.*) Having done so, you now attest that you have been sober for 16 months, that you receive out-patient counseling, as needed, and that you are learning to respect yourself, and others, and to be a responsible member of society. (*Id.* at p. 2)

Your personal statement is substantiated by the record which indicates that you were placed on probation from December 18, 1992 until November 22, 1995 and that, while on probation, you “struggled with sobriety but [have] since been able to comply with out-patient treatment and attend AA.” (Superior Court of New Jersey, Somerset/Hunterdon/Warren Vicinage, Application for Order Granting Termination of Probation, March 31, 1997) Additionally, a representative of the Hunterdon Drug Awareness Program, Inc. confirms your sobriety and your commitment to recovery.

Please know that I have carefully considered all documents and letters of support submitted on your behalf and, while I recognize that you are making notable strides in your recovery and are also making progress toward rehabilitation, I cannot be convinced, as I must by law, that you have established rehabilitation by clear and convincing evidence, particularly in view of your admittedly prolonged use of drugs and the serious consequences of that use.

Accordingly, pursuant to applicable law, your disqualification from school employment is affirmed. This determination does not preclude you from requesting a rehabilitation determination when sufficient time has transpired for you to meet the standards set forth in *N.J.S.A.* 18A:6-7.1. An appeal of this decision may be made to the State Board of Education pursuant to *N.J.A.C.* 6:2-1.1.

Sincerely,

David C. Hespe, Assistant Commissioner
Executive Services

c: Carl Carabelli